



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live*

Frank O'Bannon  
Governor

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TO: Applicant

FROM: Janet McCabe, Assistant Commissioner for the Office of Air Management

SUBJECT: Identification of Potentially Affected Persons

The Administrative Orders and Procedures Act (IC 4-21.5-3-5) requires that the Indiana Department of Environmental Management (IDEM) give notice of its decision on your application to the following:

- (a) each person to whom the decision is specifically directed;
- (b) each person to whom a law requires notice be given;
- (c) each competitor who has applied to the IDEM for a mutually exclusive license if issuance is the subject of the decision and the competitor's application has not been denied in an order for which all rights to judicial review have been waived or exhausted;
- (d) each person who has provided the IDEM with a written request for notification of the decision;
- (e) each person who has a substantial and direct proprietary interest in the subject of the decision;
- (f) each person whose absence as a party in the proceeding concerning the (permit) (variance) decision would deny another party complete relief in the proceeding or who claims an interest related to the issuance of the (permit) (variance) and is so situated that the deposition of the matter, in the person's absence, may:
  - 1. as a practical matter impair or impede the person's ability to protect that interest or
  - 2. leave any other person who is a party to a proceeding concerning the (permit) (variance) subject to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of the person's claimed interest.

IC 4-21.5-3-5(f) provides that we may request your assistance in identifying these people. Failure to properly identify and notify these people of the decision could have the result of voiding any decision which is made.

As part of your application, identify those people who you believe are entitled to notice by IC 4-21.5-3-5. I am especially interested in your identifying those addressed under subdivisions (e) and (f) above.

Your assistance in identifying these people will help ensure that the statutory intent is met and the decision made by the IDEM is upheld upon administrative or judicial review.

Thank you for your cooperation. If there are any questions please contact the Office of Air Management at (317) 233-0178.

## **OPEN BURNING VARIANCE CRITERIA**

A request for a variance from 326 IAC 4-1 may be recommended for denial if any of the following conditions exist:

1. Applicant has not demonstrated that alternative methods are impractical or prohibitively expensive. For example, for land clearing needed for commercial/residential or industrial development, it is assumed unless otherwise demonstrated, that alternative disposal methods are available and can be accounted for in project costs.
2. The burn site is within:
  - a) 100' of a structure
  - b) 100' of a powerline
  - c) 300' of a frequently traveled road
  - d) 300' of a highly flammable or hazardous material storage facility
3. There are more than five residences or structures within 500' of the proposed burn site.
4. There is a valid objection or past complaint filed by any person or local government office.
5. Materials include anything other than dry natural growth.
6. Generation of waste is continuous and a result of routine business operation.
7. There are past open burning violations at the site or by the applicant.
8. Violation of the open burning rule by the applicant is in litigation.
9. For State Highway projects, the INDOT did not obtain the variance prior to awarding the contract.
10. When material to be burned:
  - a) consists of 1,000 or more cubic feet total
  - b) may create excessive emissions
  - c) is located in a nonattainment area for particulates or ozone (warm months)
11. A structure for fire training has been demolished prior to training activities.
12. A structure for fire training contains asbestos or any other materials deemed hazardous, if burned.
13. Material to be burned are stumps of trees.

## **ALTERNATE METHODS OF DISPOSAL**

Alternate methods of disposal may include the following:

1. Chipping where natural growth is to be disposed.
2. Burying the material on site. The following are the only materials that may be buried on site: Uncontaminated rocks, bricks, concrete, road demolition debris, dirt and products of natural growth such as leaves, twigs, branches, limbs, tree trunks, tree stumps, saw dust, grass clippings and other uncontaminated vegetation. (However, because burying vegetative wastes can result in potential future problems with ground subsidence, the IDEM Office of Land Quality recommends that burial sites be located with care or that, to the fullest extent possible, vegetative wastes be disposed of by other means, such as shredding and then composting, or otherwise incorporating such wastes into the soil.)
3. Hauling the material to an approved landfill.
4. Recycling material where appropriate and practical.
5. Windrowing natural growth or allowing the material to remain on site.
6. Use of an air curtain open pit destructor when prior written approval is received by the applicant from the Department of Environmental Management. Appropriate request form available upon request.
7. Removing fire wood from natural growth pile.